

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GARDENIA G. DELUNA,

Plaintiff,

v.

MARTIN O'MALLEY,
COMMISSIONER OF SOCIAL
SECURITY,¹

Defendant.

Case No. 1:23-cv-00902-HBK

ORDER DENYING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT, GRANTING
DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT, AND AFFIRMING THE
DECISION OF THE COMMISSIONER OF
SOCIAL SECURITY²

(Doc. Nos. 15, 17)

Gardenia G. DeLuna ("Plaintiff") seeks judicial review of a final decision of the Commissioner of Social Security ("Commissioner" or "Defendant") denying her application for supplemental security income under the Social Security Act. (Doc. No. 1). The matter is currently before the undersigned on the parties' briefs, which were submitted without oral argument. (Doc. Nos. 15, 17). For the reasons stated, the Court denies Plaintiff's motion for

¹ This action was originally filed against Kilolo Kijakazi in his capacity as the Commissioner of Social Security. (See Doc. No. 1). The Court has substituted Martin O'Malley, who has since been appointed the Acting Commissioner of Social Security, as the defendant in this suit. See Fed. R. Civ. P. 25(d).

² Both parties have consented to the jurisdiction of a magistrate judge, in accordance with 28 U.S.C. §636(c)(1). (Doc. No. 6).

1 summary judgment, grants Defendant's motion for summary judgment, and affirms the
2 Commissioner's decision.

3 I. JURISDICTION

4 Plaintiff protectively filed for supplemental security income on March 27, 2017, alleging a
5 disability onset date of March 27, 2017. (AR 195-217). Benefits were denied initially (AR 79-
6 99, 121-26) and upon reconsideration (AR 100-16, 130-35). Plaintiff appeared for a hearing
7 before an administrative law judge ("ALJ") on January 3, 2020. (AR 40-78). Plaintiff testified at
8 the hearing and was represented by counsel. (*Id.*). The ALJ denied benefits (AR 13-39) and the
9 Appeals Council denied review (AR 2-7). On July 13, 2021, the United States District Court for
10 the Eastern District of California remanded the case for further proceedings. (AR 813-14). On
11 remand, Plaintiff appeared for a telephonic hearing before the ALJ on March 7, 2022. (AR 723-
12 60). She testified and was represented by counsel. (*Id.*). The ALJ denied benefits (AR 638-76),
13 and the Appeals Council denied review. (AR 621-32). The matter is before the Court under 42
14 U.S.C. § 1383(c)(3).

15 II. BACKGROUND

16 The facts of the case are set forth in the administrative hearing and transcripts, the ALJ's
17 decision, and the briefs of Plaintiff and Commissioner. Only the most pertinent facts are
18 summarized here.

19 Plaintiff was 27 years old at the time of the second hearing. (AR 732). She completed
20 twelfth grade. (AR 246). She is married and has two children, aged six and seven. (AR 732).
21 She worked part-time as a Lyft driver in 2019. (AR 734-35). Plaintiff testified she had to stop
22 working because of anxiety and back pain. (AR 735). She reported experiencing lower back pain
23 "all the time," and describes it as stabbing and burning pain that travels down to her feet at times.
24 (AR 735-36). On a typical day the pain is a six out of ten. (AR 736). Plaintiff testified she also
25 has neck pain that travels to the top part of her back and shoulder, and carpal tunnel syndrome
26 that causes numbness, difficulty grasping, pins and needles, and dropping objects. (AR 736-38).
27 She can take care of "some of the chores" "a little bit" but can only use her hands for three to five
28 minutes before she has to stop. (AR 738-39). Plaintiff reported she can stand for ten minutes

1 before she has to sit down, she can walk for 30-35 steps before she has to take a break, she can sit
2 for 15 minutes at a time, and she can lift no more than 20 pounds. (AR 739-40). She testified
3 that she needs help dressing, showering, and “opening stuff” when cooking. (AR 740-41). She is
4 enrolled in online school, helps her kids with homework, and plays video games with her kids.
5 (AR 741, 751).

6 **III. STANDARD OF REVIEW**

7 A district court’s review of a final decision of the Commissioner of Social Security is
8 governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the
9 Commissioner’s decision will be disturbed “only if it is not supported by substantial evidence or
10 is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). “Substantial
11 evidence e” means “relevant evidence that a reasonable mind might accept as adequate to support
12 a conclusion.” *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial
13 evidence equates to “more than a mere scintilla[,] but less than a preponderance.” *Id.* (quotation
14 and citation omitted). In determining whether the standard has been satisfied, a reviewing court
15 must consider the entire record as a whole rather than searching for supporting evidence in
16 isolation. *Id.*

17 In reviewing a denial of benefits, a district court may not substitute its judgment for that of
18 the Commissioner. “The court will uphold the ALJ’s conclusion when the evidence is susceptible
19 to more than one rational interpretation.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir.
20 2008). Further, a district court will not reverse an ALJ’s decision on account of an error that is
21 harmless. *Id.* An error is harmless where it is “inconsequential to the [ALJ’s] ultimate
22 nondisability determination.” *Id.* (quotation and citation omitted). The party appealing the ALJ’s
23 decision generally bears the burden of establishing that it was harmed. *Shinseki v. Sanders*, 556
24 U.S. 396, 409-10 (2009).

25 **IV. SEQUENTIAL EVALUATION PROCESS**

26 A claimant must satisfy two conditions to be considered “disabled” within the meaning of
27 the Social Security Act. First, the claimant must be “unable to engage in any substantial gainful
28 activity by reason of any medically determinable physical or mental impairment which can be

1 expected to result in death or which has lasted or can be expected to last for a continuous period
2 of not less than twelve months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant’s impairment
3 must be “of such severity that he is not only unable to do his previous work[,] but cannot,
4 considering his age, education, and work experience, engage in any other kind of substantial
5 gainful work which exists in the national economy.” 42 U.S.C. § 1382c(a)(3)(B).

6 The Commissioner has established a five-step sequential analysis to determine whether a
7 claimant satisfies the above criteria. See 20 C.F.R. § 416.920(a)(4)(i)-(v). At step one, the
8 Commissioner considers the claimant’s work activity. 20 C.F.R. § 416.920(a)(4)(i). If the
9 claimant is engaged in “substantial gainful activity,” the Commissioner must find that the
10 claimant is not disabled. 20 C.F.R. § 416.920(b).

11 If the claimant is not engaged in substantial gainful activity, the analysis proceeds to step
12 two. At this step, the Commissioner considers the severity of the claimant’s impairment. 20
13 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from “any impairment or combination of
14 impairments which significantly limits [his or her] physical or mental ability to do basic work
15 activities,” the analysis proceeds to step three. 20 C.F.R. § 416.920(c). If the claimant’s
16 impairment does not satisfy this severity threshold, however, the Commissioner must find that the
17 claimant is not disabled. 20 C.F.R. § 416.920(c).

18 At step three, the Commissioner compares the claimant’s impairment to severe
19 impairments recognized by the Commissioner to be so severe as to preclude a person from
20 engaging in substantial gainful activity. 20 C.F.R. § 416.920(a)(4)(iii). If the impairment is as
21 severe or more severe than one of the enumerated impairments, the Commissioner must find the
22 claimant disabled and award benefits. 20 C.F.R. § 416.920(d).

23 If the severity of the claimant’s impairment does not meet or exceed the severity of the
24 enumerated impairments, the Commissioner must pause to assess the claimant’s “residual
25 functional capacity.” Residual functional capacity (RFC), defined generally as the claimant’s
26 ability to perform physical and mental work activities on a sustained basis despite his or her
27 limitations, 20 C.F.R. § 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

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At step four, the Commissioner considers whether, in view of the claimant's RFC, the claimant is capable of performing work that he or she has performed in the past (past relevant work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of performing such work, the analysis proceeds to step five.

At step five, the Commissioner considers whether, in view of the claimant's RFC, the claimant is capable of performing other work in the national economy. 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner must also consider vocational factors such as the claimant's age, education, and past work experience. 20 C.F.R. § 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(g)(1). If the claimant is not capable of adjusting to other work, analysis concludes with a finding that the claimant is disabled and is therefore entitled to benefits. 20 C.F.R. § 416.920(g)(1).

The claimant bears the burden of proof at steps one through four above. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five, the burden shifts to the Commissioner to establish that (1) the claimant is capable of performing other work; and (2) such work "exists in significant numbers in the national economy." 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

V. ALJ'S FINDINGS

At step one, the ALJ found that Plaintiff has not engaged in substantial gainful activity since March 27, 2017, the application date. (AR 644). At step two, the ALJ found that Plaintiff has the following severe impairments: mild degenerative disc disease of the lumbar spine, early degenerative disc disease of the cervical spine, bilateral carpal tunnel syndrome, and morbid obesity. (AR 644). At step three, the ALJ found that Plaintiff does not have an impairment or combination of impairments that meets or medically equals the severity of a listed impairment. (AR 649). The ALJ then found that Plaintiff has the RFC to

to perform light work, as defined in 20 CFR 416.967(b), including the ability to lift and/or carry 20 pounds occasionally and 10 pounds frequently. She can frequently stoop, kneel, crouch, crawl, and climb

ramps and stairs. She can never climb ladders, ropes, or scaffolds. She can frequently reach, handle, finger, feel, push and/or pull with the bilateral upper extremities. She can tolerate occasional exposure to excessive vibration and to unprotected heights.

(AR 651). At step four, the ALJ found that Plaintiff is unable to perform any past relevant work. (AR 665). At step five, the ALJ found that considering Plaintiff's age, education, work experience, and RFC, there are jobs that exist in significant numbers in the national economy that Plaintiff can perform, including office helper, mail checker, and clothing presser. (AR 665-66). On that basis, the ALJ concluded that Plaintiff has not been under a disability, as defined in the Social Security Act, since March 27, 2017, the date the application was filed. (AR 667).

VI. ISSUES

Plaintiff seeks judicial review of the Commissioner's final decision denying her supplemental security income benefits under Title XVI of the Social Security Act. (Doc. No. 1). Plaintiff raises the following issue for this Court's review: whether the ALJ properly assessed the RFC. (Doc. No. 15 at 18-25).

VII. DISCUSSION

The RFC assessment is an administrative finding based on all relevant evidence in the record, not just medical evidence. *Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005). In determining the RFC, the ALJ must consider all limitations, severe and non-severe, that are credible and supported by substantial evidence in the record. (*Id.*) (RFC determination will be affirmed if supported by substantial evidence). However, an ALJ's RFC findings need only be consistent with relevant assessed limitations and not identical to them. *Turner v. Comm'r of Soc. Sec.*, 613 F.3d 1217, 1222-23 (9th Cir. 2010). Ultimately, a claimant's RFC is a matter for the ALJ to determine. *See Vertigan v. Halter*, 260 F.3d 1044, 1049 (9th Cir. 2001) ("It is clear that it is the responsibility of the ALJ ... to determine residual functional capacity.").

1. Physical RFC – Bilateral Carpal Tunnel Syndrome

Plaintiff argues the ALJ had "no reasonable basis for the limitations in [the] RFC" limiting her to frequent bilateral handling and fingering because (1) she found "none of the reviewing physicians captured the totality of Plaintiff's limitations, or alternatively, over-stated

1 Plaintiff's feeling, handling and fingering ability, and ruled that no opinion was more than
2 partially persuasive"; (2) she "disagreed with Plaintiff's own assessment that she could not
3 perform handling and fingering for more than three to five minutes at a time"; and (3) she
4 discounted treating opinion of family nurse practitioner Jasmine Hill and the examining opinion
5 of Dr. Samuel Rush. (Doc. No. 15 at 18-19). Plaintiff further contends that "[i]n light of the fact
6 that neither Plaintiff's testimony, nor the opinions of the reviewing or examining doctors support
7 the assessed RFC, it is evident that the ALJ relied on her own lay interpretation of the evidence."
8 (*Id.* at 19). These arguments are inapposite.

9 First, Plaintiff does not specifically challenge the ALJ's finding that the prior
10 administrative findings of the reviewing physicians regarding Plaintiff's manipulative limitations
11 are "mostly persuasive" because they are consistent with the overall record of normal physical
12 examination findings, the mild diagnostic evidence, and history of conservative treatment. (AR
13 95 (assessing frequent handling and fingering of right upper extremity and occasional feeling of
14 bilateral upper extremities), 111 (same), 659-60). Similarly, Plaintiff does not specifically
15 challenge the ALJ's finding that Ms. Hill's opinion that Plaintiff could use her bilateral upper
16 extremities including hands and fingers only 5% of an eight-hour workday is not persuasive
17 because the opinion was not well supported by reference to clinical or other objective evidence
18 including Ms. Hill's own recommendation for conservative treatment, and was inconsistent with
19 normal physical examination findings and Plaintiff's ability to perform extensive activities
20 including care of two minor children and working as a Lyft driver which "involves significant use
21 of the hands and feet for driving as well as assisting passengers." (AR 404, 661-62). Nor does
22 Plaintiff challenge the ALJ's finding that Dr. Rush's opined limitation of occasional use of
23 bilateral hands for all manipulative activities is unpersuasive because it is unclear what records he
24 reviewed, if any, before preparing his opinion, relies heavily on Plaintiff's subjective complaints,
25 is internally inconsistent, is inconsistent with Plaintiff's work ability including working as a Lyft
26 driver involving use of bilateral upper and lower extremities during hundreds of miles a week, is
27 inconsistent with normal physical examination findings both one month before and after the
28 examination, is inconsistent with longitudinal record of normal examination findings, and is

1 inconsistent with daily activities. (AR 616, 662-64).

2 The Court may decline to consider the ALJ's evaluation of the medical opinion evidence
3 because the issue is not raised with specificity in Plaintiff's opening brief. *Carmickle v. Comm'r*
4 *of Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008); *see also Kim v. Kang*, 154 F.3d
5 996, 1000 (9th Cir. 1998) (the Court may not consider on appeal issues not "specifically and
6 distinctly argued" in the party's opening brief). Regardless, the ALJ properly evaluated the
7 persuasiveness of these opinions pursuant to the revised regulations and incorporated the well-
8 supported limitations due to the claimed impairment of bilateral carpal tunnel syndrome into the
9 assessed RFC. 20 C.F.R. § 416.920c(c)(1)-(2) (outlining consistency and supportability factors);
10 *Woods v. Kijakazi*, 32 F.4th 785 (9th Cir. 2022) (the ALJ "must 'articulate ... how persuasive' [he
11 or she] finds 'all of the medical opinions' from each doctor or other source ... and 'explain how
12 [he or she] considered the supportability and consistency factors' in reaching these findings.");
13 *see also Ford v. Saul*, 950 F.3d 1141, 1155 (9th Cir. 2020) ("the ALJ may permissibly reject
14 check-off reports that do not contain any explanation of the bases of their conclusion."); *Morgan*
15 *v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 601-02 (1999) (ALJ may discount a medical opinion
16 that is inconsistent with a claimant's reported functioning); *Bayliss*, 427 F.3d at 1217 (opinion
17 may be discounted if it relies largely on claimant's unreliable self-report).

18 Second, Plaintiff appears to argue the RFC is not supported by substantial evidence
19 because the "ALJ has failed to put forth any clear and convincing reasons for rejecting Plaintiff's
20 complaints of hand use." (Doc. No. 15 at 19-23). An ALJ engages in a two-step analysis when
21 evaluating a claimant's testimony regarding subjective pain or symptoms. *Lingenfelter v. Astrue*,
22 504 F.3d 1028, 1035-36 (9th Cir. 2007). The ALJ first must determine whether there is
23 "objective medical evidence of an underlying impairment which could reasonably be expected to
24 produce the pain or other symptoms alleged." *Id.* (internal quotation marks omitted). "The
25 claimant is not required to show that his impairment could reasonably be expected to cause the
26 severity of the symptom he has alleged; he need only show that it could reasonably have caused
27 some degree of the symptom." *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009) (internal
28 quotation marks omitted). "If the claimant meets the first test and there is no evidence of

1 malingering, the ALJ can only reject the claimant's testimony about the severity of the symptoms
2 if [the ALJ] gives 'specific, clear and convincing reasons' for the rejection." *Ghanim v. Colvin*,
3 763 F.3d 1154, 1163 (9th Cir. 2014) (internal citations and quotations omitted). "General
4 findings are insufficient; rather, the ALJ must identify what testimony is not credible and what
5 evidence undermines the claimant's complaints." *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834
6 (9th Cir. 1995)); *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) ("[T]he ALJ must make
7 a credibility determination with findings sufficiently specific to permit the court to conclude that
8 the ALJ did not arbitrarily discredit claimant's testimony."). "The clear and convincing
9 [evidence] standard is the most demanding required in Social Security cases." *Garrison v.*
10 *Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v. Comm'r of Soc. Sec. Admin.*, 278
11 F.3d 920, 924 (9th Cir. 2002)).

12 Here, the ALJ found that Plaintiff's medically determinable impairments could reasonably
13 be expected to cause some of the alleged carpal tunnel symptoms; however, Plaintiff's
14 "statements concerning the intensity, persistence, and limiting effects of these symptoms are not
15 entirely consistent with the medical evidence and other evidence in the record" for several
16 reasons. (AR 653). First, the ALJ noted

17 [b]ecause of her bilateral carpal tunnel syndrome condition and
18 recent diagnosis of 'early degenerative disc disease' at the cervical
19 spine, the undersigned finds accommodation of frequent reaching,
20 handling, fingering, feeling, pushing, and/or pulling with the bilateral
21 upper extremities is warranted. However, greater limitations are not
required given history of normal physical examination findings and
history of conservative treatment throughout the entire period under
review without need for injections or surgery.

22 (AR 656). Medical evidence is a relevant factor in determining the severity of a claimant's pain
23 and its disabling effects, but the ALJ may not discredit a claimant's pain testimony and deny
24 benefits solely because the degree of pain is not supported by objective medical evidence. *Rollins*
25 *v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); *see Parra v. Astrue*, 481 F.3d 742, 751 (9th Cir.
26 2007) (evidence of "conservative treatment" may be sufficient to discount a claimant's testimony
27 regarding the severity of an impairment).

28 Plaintiff argues that the ALJ improperly considered the objective and clinical medical

1 evidence as part of her consideration of Plaintiff's symptom claims. (Doc. No. 15 at 19-22).
2 First, Plaintiff contends the ALJ misstated the findings of the 2020 x-ray of her left hand and
3 wrist as showing "no degenerative or inflammatory changes," when a review of that entry states
4 there was "diffuse severe swelling" of the left hand and wrist, and the ALJ misstated that "the
5 record contains no recommendation for surgical intervention." (*Id.* at 20; AR 1082). However,
6 elsewhere in the ALJ's decision, she recognizes that the 2020 x-ray showed "diffuse, severe
7 swelling" but the same testing explicitly indicated that there were "no degenerative changes or
8 inflammatory changes noted" (AR 658, 1082), and the ALJ specifically found "[o]verall, there
9 are no consistent complaints for the carpal tunnel syndrome. ... Dr. Eagan offered to do surgery
10 for the carpal tunnel, with the claimant declining, due to fear of getting a keloid." (AR 428
11 (noting keloids were possible), 658-59). Second, Plaintiff argues the ALJ failed to address
12 treatment notes observing decreased sensation and diminished capacity of her hands, and
13 "conflat[ed] findings regarding upper extremity strength, range of motion, reflexes and sensation
14 to imply that findings regarding the bilateral hands are the same. [but] exactly none of these
15 entries indicate that there was any testing of Plaintiff's hands." (Doc. No. 15 at 20-21). As noted
16 by Defendant, however, "Plaintiff offers no support for her argument that hands are not part of
17 the upper extremity," and the treatment notes include several observations regarding tenderness in
18 Plaintiff's left finger as part of the examination of her "upper extremities." (Doc. No. 17 at 20
19 (citing AR 1139 ("left first finger mild tenderness"), 1142 ("left wrist joint tenderness with [range
20 of motion], left first finger tenderness"))).

21 The Court's review of the ALJ's decision indicates she did consider examination findings
22 and objective evidence in support of this finding, including several of the records cited by
23 Plaintiff in support of her argument. Specifically, as to Plaintiff's carpal tunnel, the ALJ cited
24 March 2017 nerve conduction studies finding bilateral carpal tunnel syndrome moderate to severe
25 on the right and moderate on the left, 2021 electromyography study showing ongoing moderate
26 bilateral carpal tunnel syndrome and mild to moderate bilateral multilevel cervical radiculopathy,
27 positive Tinel and Phalen's sign bilaterally, findings of decreased sensation cited by Plaintiff in
28 support of her argument, normal x-rays of the bilateral hands in 2017 and 2020 with no

1 degenerative or arthritic changes, and cervical spine x-rays in February 2022 showing mild disc
2 space narrowing consistent with early degenerative disc disease; as well as examination findings
3 throughout the relevant adjudicatory period of normal or intact strength, normal sensation and
4 reflexes, no joint tenderness, and normal range of motion at the cervical spine and bilateral
5 extremities. (AR 422-27, 430, 434-35, 499, 656-58, 1065, 1071, 1075, 1082, 1085-86
6 (recommending continued use of wrist braces and medication), 1089, 1092-97, 1099, 1102, 1105,
7 1108, 1118, 1128, 1130, 1133, 1145, 1148, 1168, 1180). Thus, when viewing the record as a
8 whole, the ALJ explicitly recognized evidence in the record that could be considered more
9 favorable to Plaintiff and nonetheless found the severity of her symptom claims regarding
10 limitations due to carpal tunnel were inconsistent with the weight of the medical evidence. (*See*
11 AR 29-30). “[W]here evidence is susceptible to more than one rational interpretation, it is the
12 [Commissioner’s] conclusion that must be upheld.” *Burch v. Barnhart*, 400 F.3d 676, 679 (9th
13 Cir. 2005). This was a clear and convincing reason, supported by substantial evidence, for the
14 ALJ to discount Plaintiff’s symptom claims when formulating the RFC.

15 Next, the ALJ found “the record shows little impact in physical functioning given
16 independent care of self, care of two minor children and ability to engage in online schooling
17 involving significant use of the bilateral upper extremities with use of a computer,” and playing
18 online video games with her children. (AR 656-57). A claimant need not be utterly incapacitated
19 in order to be eligible for benefits. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989); *see also*
20 *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (“the mere fact that a plaintiff has carried on
21 certain activities . . . does not in any way detract from her credibility as to her overall disability.”).
22 However, even where daily activities “suggest some difficulty functioning, they may be grounds
23 for discrediting the [Plaintiff’s] testimony to the extent that they contradict claims of a totally
24 debilitating impairment.” *Molina v. Astrue*, 674 F.3d 1104, 1112-13 (9th Cir. 2012) (internal
25 citations omitted), *superseded on other grounds by* 20 C.F.R. § 416.920(a). Plaintiff argues there
26 is “no evidence regarding the amount of time or frequency of occasions that [she] engaged” in
27 activities like playing video games, or how much time in a typical day she used her hands while
28 completing 12 credit hours of online schooling; and “[t]he fact that Plaintiff cares for minor

1 children is not, in and of itself, evidence that Plaintiff can use her hands to perform gross and fine
2 manipulation for the majority of the day.” (Doc. No. 15 at 22).

3 However, regardless of evidence that could be viewed more favorably to Plaintiff, it was
4 reasonable for the ALJ to conclude that Plaintiff’s ability to attend full-time online classes
5 including use of a laptop and posting on forums as part of the curriculum, assisting her children
6 with homework and caring for them as young children “without any issues noted” in the record,
7 cooking, and playing video games that “require the use of hands to operate controls,” “is not
8 supportive of her allegations in extreme limitations in the use of her hands” including inability to
9 use them more than three to five minutes at a time. (AR 436, 659, 739, 741, 743-44, 751, 1044-
10 45 (reporting no concerns with household chores and “meaningful activities” including gardening
11 and video games)); *Molina*, 674 F.3d at 1113 (Plaintiff’s activities may be grounds for
12 discrediting Plaintiff’s testimony to the extent that they contradict claims of a totally debilitating
13 impairment); *see also Tommasetti*, 533 F.3d at 1040 (ALJ may draw inferences logically flowing
14 from evidence); *Burch*, 400 F.3d at 679 (where evidence is susceptible to more than one
15 interpretation, the ALJ’s conclusion must be upheld). The Court concludes that the ALJ provided
16 clear and convincing reasons, supported by substantial evidence, for rejecting Plaintiff’s symptom
17 claims when formulating the RFC.³

18 For the foregoing reasons, the ALJ provided a detailed review of the medical evidence,
19 properly evaluated the medical opinion evidence under the new regulations, and properly
20 discounted Plaintiff’s subjective complaints regarding bilateral carpal tunnel syndrome, in
21 assessing Plaintiff’s RFC. Plaintiff does not cite, nor does the Court discern, any specific
22 functional limitations related to carpal tunnel syndrome in the medical record, including the

23 ³ While not identified by either party, the ALJ additionally noted that Plaintiff the record includes no
24 treatment records for any “issue” from July 2018 through the first week in April 2019, a period she was
25 also working as a Lyft driver. (AR 657 (“If her back, or even the carpal tunnel syndrome was really
26 bothering her during that period, there would have been some treatment.”)); *Carmickle*, 533 F.3d at 1161
27 n.2 (court may decline to consider issues not raised with specificity in plaintiff’s opening brief).
28 Unexplained, or inadequately explained, failure to seek treatment or follow a prescribed course of
treatment may be the basis for rejection of Plaintiff’s symptom claims unless there is a showing of a good
reason for the failure. *Orn v. Astrue*, 495 F.3d 625, 638 (9th Cir. 2007); *see also Bray v. Comm’r Soc. Sec.*
Admin., 554 F.3d 1219, 1227 (9th Cir. 2009) (the ability to work may be considered in assessing symptom
claims).

1 medical opinions, that were not properly accounted for the in the assessed RFC. Thus, Plaintiff
 2 has not shown that the ALJ committed harmful error in formulating the “physical RFC.” *See*
 3 *Rounds v. Comm’r of Soc. Sec. Admin.*, 807 F.3d 996, 1006 (9th Cir. 2015) (“the ALJ is
 4 responsible for translating and incorporating clinical findings into a succinct RFC”); *Bufkin v.*
 5 *Saul*, 836 Fed. App’x 578, 579 (9th Cir. 2021) (“Contrary to [plaintiff’s] argument, the ALJ did
 6 not rely on her ‘lay interpretation’ of medical evidence. Rather, the ALJ simply summarized the
 7 medical evidence from [physicians]; she did not interpret any x-rays or test results directly. ALJs
 8 need not seek the opinion of a medical expert every time they review new medical evidence and
 9 make a RFC determination.”); *see also Lamas v. Saul*, 2020 WL 6561306, at *9 (E.D. Cal. Nov.
 10 9, 2020)) (“The Court finds that the ALJ’s error in this case was harmless [as] [t]he limitations
 11 that the ALJ included in the RFC pertaining to Plaintiff’s mental impairments were more
 12 restrictive than those to which the medical opinions of record opined, yet the ALJ nonetheless
 13 found that there would be work available with those more stringent limitations.”); *Johnson v.*
 14 *Shalala*, 60 F.3d 1428, 1436 n.9 (9th Cir. 1995) (“overinclusion of debilitating factors is
 15 harmless”).

16 **B. Mental RFC**

17 To the extent discernable, Plaintiff argues the ALJ erred by failing to incorporate mild
 18 mental limitations in Plaintiff’s ability to interacting with others and concentrating, persisting, or
 19 maintaining pace in the assessed RFC. This argument is unavailing for several reasons. First, the
 20 limitations cited by Plaintiff in support of this argument were assessed as part of the special
 21 psychiatric review technique (PRT) used to determine the degree of functional limitation at step
 22 two and three of the sequential analysis. (AR 645-48); *see Garcia v. Comm’r of Soc. Sec.*, 2022
 23 WL 2110709, at *10 (“the limitations identified in the ‘paragraph B’ criteria are not a residual
 24 functional capacity assessment but are used to rate the severity of mental impairments at steps 2
 25 and 3 of the sequential evaluation process.”). The PRT requires an ALJ to consider the degree of
 26 functional limitation resulting from the mental impairment in four broad functional areas: (1)
 27 understanding, remembering, or applying information; (2) interacting with others; (3)
 28 concentrating, persisting, or maintaining pace; and (4) adapting or managing oneself. 20 C.F.R. §

1 404.1520a(c)(3). Here, the ALJ found that Plaintiff had no limitations in understanding,
 2 remembering, or applying information and adapting or managing oneself. (AR 645). The ALJ
 3 found Plaintiff had mild limitations⁴ in interacting with others and concentrating, persisting, or
 4 maintaining pace. (*Id.*).

5 Defendant argues “the Ninth Circuit has confirmed that, so long as an ALJ considers the
 6 claimant’s mental limitations, the ALJ is not required to include those mental limitations into the
 7 RFC.” (Doc. No. 17 at 14); *Woods*, 32 F.4th at 794 (rejecting plaintiff’s argument that the ALJ
 8 failed to include mild mental limitations from “paragraph B” criteria in the RFC determination);
 9 *Tyson v. Kijakazi*, 2023 WL 2313192, at *5 (E.D. Cal. Mar. 1, 2023) (“As in *Woods*, the court
 10 likewise finds that the ALJ did not err by failing to include any mild mental limitations in the
 11 RFC.”); *Hilda V.A. v. Kijakazi*, 2023 WL 1107867, at *4 (C.D. Cal. Jan. 30, 2023) (noting *Woods*
 12 resolved previous district court conflict regarding whether the ALJ erred in finding mild mental
 13 limitation in the PRT analysis and then failing to account for those limitations in the RFC, and
 14 finding no procedural error where the ALJ indicated the RFC reflects the degree of limitation
 15 found in the PRT analysis). The Court agrees. Here, the ALJ expressly stated that the RFC
 16 assessment “reflects the degree of limitation ... found in the ‘paragraph B’ mental function
 17 analysis.” See *Tyson*, 2023 WL 2313192, at * 5 (“When an ALJ performs the Paragraph B
 18 analysis and indicates the ‘degree of limitation’ is incorporated into the RFC, this is sufficient to
 19 carry the burden imposed by the Regulations.”); *Tyler M.E. v. O’Malley*, 2024 WL 1887052, at
 20 *4 (Apr. 29, 2024) (same). Moreover, Plaintiff does not challenge the ALJ’s conclusion at step
 21 two, nor does she “identify any particular evidence that the ALJ failed to consider or explain why
 22 the record does not support the ALJ’s findings regarding her mental functioning.” See *Woods*, 32
 23 F.4th 794. Thus, the Court finds no error in the ALJ’s assessment of Plaintiff’s alleged mental
 24 health limitations at any step of the sequential analysis.

25 Second, Plaintiff’s argument is premised on the vocational expert’s response to a
 26 hypothetical posed in part by Plaintiff’s counsel at the hearing that “if an individual were limited

27
 28 ⁴ A mild limitation means that a plaintiff’s independent, appropriate, and effective functioning in the
 specified area is “slightly limited.” 20 C.F.R. Pt. 404, Subpt. P, Appx. 1 § 12.00(F)(2)(b).

1 to only occasional use of the hands and further limited to reasoning level two work, no
 2 occupations would be available.” (Doc. No. 15 at 23-24; AR 757-58). According to Plaintiff,
 3 “[a]ssuming that Plaintiff’s ability to use her hands for gross and fine manipulation on an
 4 occasional basis, as argued above, the issue of Plaintiff’s capacity to perform level three, versus
 5 reasoning level two, is outcome determinative.” (*Id.* at 24-25) (emphasis added). However, the
 6 ALJ is “free to accept or reject restrictions in a hypothetical question that are not supported by
 7 substantial evidence.” *Osenbrock v. Apfel*, 240 F.3d 1157, 1164-65 (9th Cir. 2001); *cf. Robbins v.*
 8 *Soc. Sec. Admin.*, 466 F.3d 880, 886 (9th Cir. 2006) (“an ALJ is not free to disregard properly
 9 supported limitations”). Here, as discussed in detail *supra*, the ALJ’s RFC assessment that
 10 Plaintiff can frequently reach, handle, finger, feel, push and/or pull with the bilateral upper
 11 extremities is supported by substantial evidence. Thus, the ALJ did not err by excluding
 12 limitations based on occasional use of hands from the RFC and the hypothetical posed to the
 13 vocational expert, and it is unnecessary for the Court to consider any ensuing argument regarding
 14 Plaintiff’s mental reasoning capability.

15 For the foregoing reasons, the Court finds no error in the ALJ’s assessment of the physical
 16 or mental RFC based on all relevant evidence in the record. (AR 651-65); *see Bayliss*, 427 F.3d
 17 at 1217.

18 VIII. CONCLUSION


19 A reviewing court should not substitute its assessment of the evidence for the ALJ’s.
 20 *Tackett*, 180 F.3d at 1098. To the contrary, a reviewing court must defer to an ALJ’s assessment
 21 as long as it is supported by substantial evidence. 42 U.S.C. § 405(g). As discussed in detail
 22 above, the ALJ properly assessed the RFC. After review, the Court finds the ALJ’s decision is
 23 supported by substantial evidence and free of harmful legal error.

24 Accordingly, it is **ORDERED**:

- 25 1. Plaintiff’s Motion for Summary Judgment (Doc. No. 15) is DENIED.
- 26 2. Defendant’s Cross-Motion for Summary Judgment (Doc. No. 17) is GRANTED, and
 27 the decision of the Commissioner of Social Security is AFFIRMED for the reasons set
 28 forth above.

- 1 3. The Clerk is directed to enter judgment in favor of the Commissioner of Social
2 Security, terminate any pending motions/deadlines, and close this case.

3
4 Dated: September 9, 2024


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE